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Attorneys for Plaintiff Ameranth, Inc.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

AMERANTH, INC.

Plaintiff,

v.

OPENTABLE, INC.,

Defendant.

Case No. **'12CV0731 MMABGS**

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**



1 in hospitality industry, restaurant, food service, and/or entertainment information technology  
2 systems in the United States, including this Judicial District; and/or (c) the use of hospitality  
3 industry, restaurant, food service, and/or entertainment information technology systems  
4 comprising said services, products, software, components and/or systems in the United States,  
5 including this Judicial District.

6 6. This Court has personal jurisdiction over Defendant because Defendant commits acts  
7 of patent infringement in this Judicial District including, *inter alia*, making, using, offering for  
8 sale or license, and/or selling or licensing infringing services, products, software, components  
9 and/or systems in this Judicial District.

10 7. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and (c) and  
11 1400(b).

## 12 **BACKGROUND**

13 8. Ameranth was established in 1996 to develop and provide its 21<sup>st</sup> Century  
14 Communications™ innovative information technology solutions for the hospitality industry  
15 (inclusive of, e.g., restaurants, hotels, casinos, nightclubs, cruise ships and other entertainment  
16 and sports venues). Ameranth has been widely recognized as a technology leader in the  
17 provision of wireless and internet-based systems and services to, *inter alia*, restaurants, hotels,  
18 casinos, cruise ships and entertainment and sports venues. Ameranth's award winning  
19 inventions enable, in relevant part, generation and synchronization of menus, including but not  
20 limited to restaurant menus, event tickets, and other products across fixed, wireless and/or  
21 internet platforms as well as synchronization of hospitality information and hospitality  
22 software applications across fixed, wireless and internet platforms, including but not limited to,  
23 computer servers, web servers, databases, affinity/social networking systems, desktop  
24 computers, laptops, "smart" phones and other wireless handheld computing devices.

25 9. Ameranth began development of the inventions leading to the patent-in-suit and the  
26 other patents in this patent family in the late Summer of 1998, at a time when the then-  
27 available wireless and internet hospitality offerings were extremely limited in functionality,  
28 were not synchronized and did not provide an integrated system-wide solution to the pervasive

1 ordering, reservations, affinity program and information management needs of the hospitality  
2 industry. Ameranth uniquely recognized the actual problems that needed to be resolved in  
3 order to meet those needs, and thereafter conceived and developed its breakthrough inventions  
4 and products to provide systemic and comprehensive solutions directed to optimally meeting  
5 these industry needs. Ameranth has expended considerable effort and resources in inventing,  
6 developing and marketing its inventions and protecting its rights therein.

7 10. Ameranth's pioneering inventions have been widely adopted and are thus now  
8 essential to the modern wireless hospitality enterprise of the 21st Century. Ameranth's  
9 solutions have been adopted, licensed and/or deployed by numerous entities across the  
10 hospitality industry.

11 11. The adoption of Ameranth's technology by industry leaders and the wide acclaim  
12 received by Ameranth for its technological innovations are just some of the many  
13 confirmations of the breakthrough aspects of Ameranth's inventions. Ameranth has received  
14 twelve different technology awards (three with "end customer" partners) and has been widely  
15 recognized as a hospitality wireless/internet technology leader by almost all major national and  
16 hospitality print publications, *e.g.*, The Wall Street Journal, New York Times, USA Today and  
17 many others. Ameranth was personally nominated by Bill Gates, the Founder of Microsoft, for  
18 the prestigious Computerworld Honors Award that Ameranth received in 2001 for its  
19 breakthrough synchronized reservations/ticketing system with the Improv Comedy Theatres.  
20 In his nomination, Mr. Gates described Ameranth as "one of the leading pioneers of  
21 information technology for the betterment of mankind." This prestigious award was based on  
22 Ameranth's innovative synchronization of wireless/web/fixed hospitality software technology.  
23 Subsequently, the United States Patent and Trademark Office granted Ameranth a number of  
24 currently-issued patents, two of which are the basis for this lawsuit. Ameranth has issued press  
25 releases announcing these patent grants on business wires, on its web sites and at numerous  
26 trade shows attended by various of the Defendants since the first of the two presently-asserted  
27 patents issued in 2002. A number of companies have licensed patents and technology from  
28 Ameranth, recognizing the value of Ameranth's innovations.

**RELATED CASE PREVIOUSLY FILED**

12. The Ameranth patent asserted herein, U.S. Patent No. 8,146,077 (the “’077 patent”), is the fourth patent to issue in Ameranth’s “Information Management and Synchronous Communications” patent family.

13. Ameranth is also currently asserting eight claims of the first three of its patents in a separate litigation pending in this Court (*Ameranth v. Pizza Hut, Inc. et al.*, Case No. 3:11-cv-01810-JLS-NLS) against several parties, including OpenTable.

**COUNT I**

**Patent Infringement (U.S. Pat. No. 8,146,077)**

**(35 U.S.C. § 271)**

14. Plaintiff reiterates and incorporates the allegations set forth in paragraphs 1-14 above as if fully set forth herein.

15. On March 27, 2012, United States Patent No. 8,146,077 entitled “Information Management and Synchronous Communications System with Menu Generation, and Handwriting and Voice Modification of Orders” (a true copy of which is attached hereto as **Exhibit A** and incorporated herein by reference) was duly and legally issued by the United States Patent & Trademark Office.

16. Plaintiff Ameranth is the lawful owner by assignment of all right, title and interest in and to the ‘077 patent.

17. On information and belief, Defendant directly infringes and continues to directly infringe one or more valid and enforceable claims of the ‘077 patent, in violation of 35 U.S.C. § 271(a) by making, using, offering for sale or license and/or selling or licensing infringing systems, products, and/or services in the United States without authority or license from Ameranth, including but not limited to the OpenTable system/product/service, which includes, inter alia, wireless and internet POS and restaurant-reservation and table management integration, online and mobile reservations, integration with e-mail and affinity program and social media applications such as Facebook, Twitter, Groupon, and YouTube, and/or other

1 third-party web-based applications, and other hospitality aspects (“OpenTable Reservation  
2 System”).

3 18. On information and belief, the OpenTable Reservation System, as deployed and/or  
4 used at or from one or more locations by OpenTable, its agents, distributors, partners, affiliates,  
5 licensees, and/or their customers, infringes one or more valid and enforceable claims of the  
6 ‘077 patent, by, *inter alia*, enabling reservations and other hospitality functions via iPhone,  
7 Android, and other internet-enabled wireless handheld computing devices as well as via Web  
8 pages, storing hospitality information and data on at least one database, on at least one wireless  
9 handheld computing device, and on at least one Web server and Web page, and synchronizing  
10 applications and data, including but not limited to applications and data relating to orders,  
11 between at least one database, wireless handheld computing devices, and at least one Web  
12 server and Web page; utilizing communications control software enabled to link and  
13 synchronize hospitality information between at least one database, wireless handheld  
14 computing device, and web page, to display information on web pages and on different  
15 wireless handheld computing device display sizes, and to allow information to be entered via  
16 Web pages, transmitted over the internet, and automatically communicated to at least one  
17 database and to wireless handheld computing devices; allowing information to be entered via  
18 wireless handheld computing devices, transmitted over the internet, and automatically  
19 communicated to at least one database and to Web pages.

20 19. On information and belief, Defendant indirectly infringes, as of the date of filing  
21 and/or service of this complaint, one or more valid and enforceable claims of the ‘077 patent,  
22 in violation of 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct  
23 infringement by other persons.

24 20. On information and belief, customers of OpenTable, including consumers and  
25 restaurant operators, use the OpenTable Reservation System in a manner that infringes upon  
26 one or more valid and enforceable claims of the ‘077 patent. OpenTable provides instruction  
27 and direction regarding the use of the OpenTable Reservation System and advertises, promotes,  
28 and encourages the use of the OpenTable Reservation System.

1        21. On information and belief, Defendant actively induces others to infringe the '077  
2 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting  
3 customers of OpenTable, including consumers and restaurant operators, to use the infringing  
4 OpenTable Reservation System in the United States without authority or license from  
5 Ameranth.

6        22. On information and belief, Defendant contributorily infringes and continues to  
7 contributorily infringe one or more valid and enforceable claims of the '077 patent, in violation  
8 of 35 U.S.C. § 271(c) by offering to sell and/or selling components of systems on which claims  
9 of the '077 patent read, constituting a material part of the invention, knowing that the  
10 components were especially adapted for use in systems which infringe claims of the '077  
11 patent.

12        23. By distributing, selling, offering, offering to sell or license and/or selling or licensing  
13 the OpenTable Reservation System, Defendant provides non-staple articles of commerce to  
14 others for use in infringing systems, products, and/or services. Additionally, OpenTable  
15 provides instruction and direction regarding the use of the OpenTable Reservation System and  
16 advertises, promotes, and encourages the use of the OpenTable Reservation System. Users of  
17 the OpenTable Reservation System directly infringe one or more valid and enforceable claims  
18 of the '077 patent, for the reasons set forth hereinabove.

19        24. On information and belief, the OpenTable Reservation System infringes one or more  
20 valid and enforceable claims of the '077 patent, for the reasons set forth hereinabove.

21        25. If Defendant does not cease and desist the aforesaid infringing activities, and instead  
22 continues to infringe valid and enforceable claims of the '077 patent after the date of filing  
23 and/or service of this complaint, then such infringing actions will have been done with  
24 knowledge and willful disregard of Ameranth's patent rights, making this an exceptional case  
25 within the meaning of 35 U.S.C. § 285.

26        26. The aforesaid infringing activity of Defendant directly and proximately causes  
27 damage to plaintiff Ameranth, including loss of profits from sales it would have made but for  
28

1 the infringements. Unless enjoined, the aforesaid infringing activity will continue and cause  
2 irreparable injury to Ameranth for which there is no adequate remedy at law.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, plaintiff Ameranth respectfully prays for judgment against Defendants,  
5 and each of them, as follows:

6 1. Adjudging that the manufacture, use, offer for sale or license and /or sale or  
7 license of the OpenTable Reservation System infringes valid and enforceable claims of the  
8 ‘077 patent, as set forth hereinabove;

9 2. Adjudging that Defendant has infringed, actively induced others to infringe  
10 and/or contributorily infringed valid and enforceable claims of the ‘077 patent, as set forth  
11 hereinabove;

12 3. If Defendant does not cease and desist the aforesaid infringing activities and  
13 instead continues to infringe valid and enforceable claims of the ‘077 patent after the date of  
14 filing and/or service of this Complaint, adjudging that Defendant’s infringement of the valid  
15 and enforceable claims of the ‘077 patent has been knowing and willful;

16 4. Enjoining Defendant, and its officers, directors, employees, attorneys, agents,  
17 representatives, parents, subsidiaries, affiliates and all other persons acting in concert,  
18 participation or privity with Defendant, and their successors and assigns, from infringing,  
19 contributorily infringing and/or inducing others to infringe the valid and enforceable claims of  
20 the ‘077 patent;

21 5. Awarding Ameranth the damages it has sustained by reason of Defendant’s  
22 infringement, together with interest and costs pursuant to 35 U.S.C. § 284;

23 6. If Defendant does not cease and desist the aforesaid infringing activities and  
24 instead continues to infringe valid and enforceable claims of the ‘077 patent after the date of  
25 filing and/or service of this Complaint, awarding Ameranth increased damages of three times  
26 the amount found or assessed against Defendant by reason of the knowing, willful and  
27 deliberate nature of Defendant’s acts of infringement pursuant to 35 U.S.C. § 284;



1           7.       Adjudging this to be an exceptional case and awarding Ameranth its attorney's  
2 fees pursuant to 35 U.S.C. §285;

3           8.       Awarding to Ameranth its costs of suit, and interest as provided by law; and

4           9.       Awarding to Ameranth such other and further relief that this Court may deem  
5 just and proper.

6                                   **DEMAND FOR JURY TRIAL**

7           Ameranth demands trial by jury of its claims set forth herein to the maximum extent  
8 permitted by law.

9                                   Respectfully submitted,  
10 Dated: March 27, 2012                   CALDARELLI HEJMANOWSKI & PAGE LLP

11                                   By: /s/ William J. Caldarelli  
12   William J. Caldarelli

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19                                   **Attorneys for Plaintiff AMERANTH, INC.**  
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